Spring Valley Foods, Inc. *and* **United Food and Commercial Workers International Union, AFL-CIO, CLC, Local 405.** Case 10-CA-17209

December 16, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On September 3, 1982, Administrative Law Judge William N. Cates issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Spring Valley Foods, Inc., Blountsville, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge: This case was heard before me on June 23, 1982, at Oneonta, Alabama. The hearing was held pursuant to a complaint issued by the Acting Regional Director for Region 10 of the National Labor Relations Board, hereinafter the Board, on August 27, 1981, and is based on a charge filed by United Food and Commercial Workers International Union, AFL-CIO, CLC, Local 405, hereinafter the Union. The complaint alleges that Spring Valley Foods, Inc., hereinafter Respondent, violated Section 8(a)(1) and (3) of the National Labor Relations Act, hereinafter the Act.

The complaint, as amended at the hearing, alleges that Respondent committed violations of Section 8(a)(1) of the Act in response to the Union's organizational campaign at Respondent's Blountsville, Alabama, facility. The Union's organizational campaign commenced on or about February 1.[1] The complaint further alleges that, on or about June 24, Respondent issued a warning to its employee Ronald G. Osborne and thereafter, on or about July 16, discharged him and has since that time failed and refused to reinstate him in violation of Section 8(a)(1) and (3) of the Act. Respondent in its answer denies having violated the Act as alleged in the complaint.

Upon the entire record in this proceeding, including my observation of the witnesses who testified herein, and after due consideration of Respondent's brief,[2] I make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Respondent, a Delaware corporation, has maintained an office and place of business located at Blountsville, Alabama, where it is engaged in the processing of chickens. During the 12-month period immediately preceding the issuance of the complaint herein, which period is representative of all times material herein, Respondent sold and shipped from its Blountsville, Alabama, facility goods valued in excess of $50,000 directly to customers located outside the State of Alabama.

The complaint alleges, Respondent admits, and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, Respondent admits, and I find that United Food and Commercial Workers International Union, AFL-CIO, CLC, Local 405, is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent has for a number of years operated a chicken processing facility in Blountsville, Alabama, where, at all times material herein, it employed approximately 400 employees. The processing of chickens is accomplished along processing lines where the chickens pass employee processors at a rate of approximately one per second. Employees are assigned to remove various parts of the chickens as they move along the processing lines, a type of work which was described and admitted to be of a monotonous boring nature.

The Union's organizational campaign at Respondent culminated in an election conducted by the Board on July 17. Shortly after the election the Union was certified and the parties entered into negotiations toward a

[1] All dates hereinafter are 1981 unless otherwise indicated.

[2] Counsel for the General Counsel timely filed a two and one-half page memorandum which I have received and considered as a brief.

collective-bargaining agreement. On September 29, the employees ratified the collective-bargaining agreement that resulted from the negotiations. On December 17, Respondent closed its Blountsville, Alabama, facility. There were no allegations in the complaint that the closing was in any manner unlawful.

Plant Manager Emris Starkey, Area Manager Richard Paracca, Quality Control Supervisor Andy Neal, and Supervisor James Williams were admitted to be supervisors and agents of Respondent within the meaning of Section 2(11) of the Act.

B. *The Alleged Violations of Section 8(a)(1) of the Act*

I shall treat the several alleged independent violations of Section 8(a)(1) of the Act according to the name of the specifically indicated supervisor alleged to have engaged in the unlawful conduct.

1. The alleged violations attributed to Quality Control Supervisor Andy Neal

The General Counsel at complaint paragraph 7 alleges that Respondent through Neal interrogated employees concerning their union membership, activities, and desires on July 16.

Counsel for the General Counsel relies upon the testimony of employee Barbara Denney to establish the alleged unlawful conduct.

Denney who commenced work for Respondent in 1976 and worked there until the plant closed in December testified she handed out leaflets for the Union during the 1981 campaign and that everyone at Respondent knew she was for the Union. She described herself as the most active person at Respondent on behalf of the Union. Denney testified that, on July 16, she was working at the plant on the Kentucky Fried Chicken line when Quality Control Supervisor Neal came up to her and asked her, "How are things going?" Denney asked what things and Neal said the Union. Denney testified Neal "asked me how I thought it would go whether it would come in or not." Denney told Neal she thought from the people that she had talked to that the Union would come in this time. Neal responded that from the people he had talked to it would not surprise him if it went either way.

Respondent did not call Neal as a witness and Respondent's counsel at the hearing stated it did not contest the conversation involving Neal. Respondent contends that the alleged interrogation was nothing short of a low-level supervisor engaging in small talk about the Union with the Union's strongest and most well-known union advocate and that, as such, no violation of the Act occurred.

I credit the uncontradicted, undisputed, and acknowledged testimony of Denney with respect to the conversation she attributes to Quality Control Supervisor Neal. I am persuaded and find that such conduct constituted unlawful interrogation as alleged in the complaint notwithstanding the fact it may have been engaged in by a low-level but admitted supervisor of Respondent inasmuch as no legitimate purpose could have been served by the inquiry.

2. The alleged violations attributed to Area Manager Buddy Paracca

The General Counsel at paragraph 7 of the complaint alleges that Respondent through Paracca, on or about April 25, interrogated employees concerning their union membership, activities, and desires in violation of Section 8(a)(1) of the Act.

Counsel for the General Counsel relies upon the testimony of employee Denney to establish the unlawful conduct attributed to Area Manager Paracca.

Denney testified that near the end of April she had a conversation with Paracca in which he sought to know why she wanted a union. Denney told Paracca that she would not tell him anything at that time but would in a few weeks if he wanted to know. Denney testified no one else was present during the conversation which took place in the supply room at Respondent's facility. Denney testified that the meeting between her and Paracca was a friendly one and that he had stated he just wanted to talk person to person with her.

Respondent's counsel at the hearing indicated Respondent was willing to admit the contents of the conversation inasmuch as it was aware that it occurred and admitted its content.

Paracca testified he spoke with Denney on the date indicated and told her he simply wanted to talk to her as one person to another and not as supervisor or employee but just person to person. Paracca testified he wanted to find out if Denney had been mistreated in the past. Paracca testified he later found out from legal counsel what he could and could not do and that he immediately reported his conduct to Plant Manager Starkey.

Respondent contends that under most standards Paracca's interrogation of Denney would be unlawful; however, Respondent has great reservations that this "friendly" and "frank" exchange between Paracca and Denney interfered with, restrained, or coerced Denney in the exercise of her Section 7 rights.

It is my opinion and I so find that the interrogation constituted coercive interference with protected rights and as such violated Section 8(a)(1) of the Act notwithstanding the fact that the participants may have engaged in a pleasant conversation as friends about the Union. The fact that the interrogation took place in a friendly atmosphere and/or among friends does not remove it from an unlawful category. See *Jax Mold & Machine, Inc.*, 255 NLRB 942 (1981), and *Mayfield's Dairy Farms, Inc.*, 225 NLRB 1017, 1019 (1976). See also *Webb's Industrial Plant Service, Inc.*, 260 NLRB 933, at fn. 2 (1982).

3. The alleged violations attributed to Plant Manager Emris Starkey

The General Counsel by amendment made at the hearing alleges at paragraph 10(a) of the complaint that Respondent on or about June 10, acting through its supervisor and agent Starkey, threatened to discharge employees if they joined or engaged in activities on behalf of the Union.

Employee Bernita Laminack testified that she attended several meetings at which officials of Respondent spoke

about the Union. One such meeting occurred approximately 2 or 3 days before the July 17 Board-conducted election. As Laminack walked out of the meeting she talked with Plant Manager Starkey. Laminack testified that Starkey told her, "We'll have to do something about Jayne [Osborne] because she's getting a little wild." Laminack testified that Osborne had attended the meeting and had spoken out during the meeting about benefits that another company that processed chickens had. Laminack testified that Osborne was trying to compare the benefits of that company with the benefits provided by Respondent. Osborne asked several questions at the meeting.

Osborne testified she was at a meeting conducted by Respondent Plant Manager Starkey and Assistant Plant Manager Casey at which meeting the Union was discussed. Osborne did not place a date on the meeting but testified she told Starkey that another chicken processing company had better benefits than Respondent. Osborne testified she was telling Starkey about the benefits when Assistant Plant Manager Casey told her to "shut up."

Plant Manager Starkey testified as follows:

> We was having group meetings and usually I would go over things, pros and cons, about the campaign, and this particular one Jayne [Osborne] did have a contract . . . she kept quoting things out of it, and would say—well, the things I was talking about was the Gadsden contract and the Ashland contract, and she got kind of aggravated. It got a little bit loud. And she thought that I didn't understand, I think, that she was talking about—she thought I thought that it wasn't the same union—well, she said—she thought I thought it was the same union at Gadsden as it was at McElrath. I believe that's what she got aggravated about . . . I believe Bea [Laminack] was in the same meeting, and we went outside, just outside the door there to be waiting on another group or something, and I didn't like the employees to get mad . . . I said that Jayne did get a little loud in that meeting. I said that we need her not to be getting so loud so we can discuss things.

I am persuaded that the incident as outlined above does not constitute anything more than a protected free heated exchange between a known union supporter and certain of Respondent's officials. Nothing said in the conversation as testified to by any of those involved herein would constitute a threat to discharge employees. I shall therefore recommend that paragraph 10(a) of the complaint be dismissed in its entirety.

4. The alleged violations attributed to Supervisor James Williams

The General Counsel in the complaint, at paragraphs 7–10 and 12–14, alleges that Respondent through Williams violated Section 8(a)(1) of the Act by interrogating employees concerning their union activities on May 1 and June 10 and 25; threatened employees with a denial of a wage increase if they joined or engaged in activities on behalf of the Union on or about July 16; threatened employees on or about June 10 with loss of their jobs if they joined or engaged in activities on behalf of the Union; promised employees on or about July 16 additional benefits if they voted against the Union; and solicited its employees on or about July 16 concerning grievances they had with Respondent and promised to remedy those grievances, at a time when it had knowledge of the Union's organizational campaign, for the purpose of causing its employees to reject the Union as their collective-bargaining representative.

The General Counsel presented Cynthia Barfoot, Bernita Laminack, Gary Wade, Jayne Osborne, and Ronald Osborne in support of the complaint allegations involving Williams. For ease of consideration I have considered the testimony on a witness-by-witness fashion rather than by complaint allegation.

Cynthia Barfoot testified she was employed by Respondent from November 1979 until December 17, 1981. Barfoot testified she spoke with Supervisor Williams approximately every other day during the union campaign at which time they discussed the pros and cons of the Union. In early to mid-June, Barfoot attended a union meeting and the following day Supervisor Williams came to her at her work station and she told him she had been to a union meeting the night before. Barfoot testified Williams asked her what had gone on at the meeting. Barfoot testified she told Williams if he wanted to know he would have to go to a meeting and find out. According to Barfoot, Williams then asked her how she was going to vote and she told him she was going to vote yes. Williams told Barfoot if the Union ever came in Respondent's plant would probably close and he would lose his job and he wanted to know who would feed his children. Barboot commented to Williams if the plant closed and she lost her job who would feed her children.

Barfoot testified that toward the end of June she and Supervisor Williams were talking about Ronald "Half-Pint" Osborne. In the conversation Williams stated to Barfoot, "If a union ever came in Half-Pint wouldn't be there long enough to enjoy it." Barfoot testified no one else was present during the conversation other than she and Williams.

Bernita Laminack testified she worked for Respondent from August 1978 until the plant closed in December 1981. Laminack worked on the cut-up line of the wing department where she clipped the right wing from chickens as they passed in front of her at the approximate rate of one chicken per second. Laminack testified that Supervisor Williams spoke with her about the Union on the day before the Board-conducted election, and told her she should vote no. Laminack testified she later asked Supervisor Williams if it were true that when the Union tried to come in at Respondent's facility a few years back that he did not vote for it. Laminack testified that when she mentioned the matter to Williams he stated to her that Half-Pint had told her that. Laminack told Williams that Osborne had not told her. Laminack testified that later Supervisor Williams stated to her that if the Union did not come in for her to write down on a piece of paper what she felt needed changing, and if he could he would try to do it for her.

Gary Wade testified he worked for Supervisor Williams on the debone line. Wade testified that Williams spoke with him in the break area at the plant approximately 2 weeks before the July 17 Board-conducted election and asked him how he was going to vote. Wade testified he told Supervisor Williams it was none of his concern and walked off.

Jayne Osborne [herein called J. Osborne], wife of Ronald Osborne, testified that Plant Manager Starkey and Assistant Plant Manager Casey held a meeting to talk about the Union. Osborne testified she asked several questions at the meeting. Supervisor Williams spoke with J. Osborne at her work station after the meeting and, according to Osborne, Williams stated: "What Starkey told you about the raises, that's true. He said that if we voted the Union in we wouldn't get a raise when Gadsden [did]. Said we had always got a raise a month to a month and a half before Gadsden, and said if a union was voted in that we'd have to wait and let the Union get our raises, that they wouldn't give them to us."

Ronald Osborne testified that right after the Union had its first meeting in Oneonta, Alabama, that Supervisor Williams spoke to him in the presence of his wife J. Osborne, who is also an employee of Respondent, and stated to him, "I heard you made a few statements last night." Osborne testified he told Williams that he went to the meeting to ask questions. Supervisor Williams then told Osborne that the employees tried to go union one time before and he (Williams) voted for it but it did not go union and it was not going to go union this time.

Respondent presented Supervisor James Williams who testified that he commenced work for Respondent in 1973, and that, during the union campaign in 1981, he was supervisor over the special, cut-up, and deboning lines. Williams testified he was a frontline supervisor close to every employee and they talked and kidded a lot together.

Williams testified he talked with employee Barfoot about the Union on a daily basis. Williams testified he could not recall in any of his conversations with Barfoot anything being said regarding his children or Barfoot's children. Williams testified that he could recall discussing the possibility of the plant closing with various employees at or about the time the Union was handing out certain of its campaign propaganda. Williams testified, "Well, a lot of employees ask me about could they close the plant or not if the Union came in . . . I told them I wasn't too sure but I thought they could." Williams testified that Barfoot asked him about the possibility of the plant closing, but he did not know if he answered her at the time because it had been such a long time ago that she had asked him.

Supervisor Williams testified that he and employee Laminack talked about the Union all the time. Williams testified Laminack asked him questions and they discussed the Union and related matters. Williams knew Laminack was for the Union because she had told him so on numerous occasions. Williams testified the only incident he could recall pertaining to a discussion between himself and Laminack that involved Ronald Osborne was that after Osborne was terminated Laminack told him that Respondent should have not terminated Osborne for the reason it did but rather that it should have terminated him on that occasion when Osborne came to the plant drinking. Respondent's counsel in questioning Supervisor Williams at the hearing asked him to examine his recollection as to whether he had said anything about Osborne with respect to the fact that if the Union got in he, Osborne, would not be there long enough to enjoy it. Williams testified: "If I said anything like that it was because of the way Half-Pint [Osborne] was acting. Well, when he first started to work at Spring Valley he was a good employee. One of the best there was. And then the last couple or two or three months he just went wild. You couldn't control him."

Williams testified he never on any occasion told Laminack that if she would tell him what she wanted and write it down he would try to get it for her if he could. Williams testified that Laminack had asked him how he voted in the election before he became a supervisor and he told her that she must have been talking to Half-Pint. Williams testified that Ronald Half-Pint Osborne had asked him the same question.

Supervisor Williams stated he could not recall talking with employee Wade about the Union.

As demonstrated by Williams' testimony set forth above he had a lack of recall with respect to most of the critical comments attributed to him by various of the witnesses presented by counsel for the General Counsel. With respect to conversations that he did recall his testimony tended to support and to some extent corroborate the testimony of the witnesses called by counsel for the General Counsel. For example Williams readily acknowledged talking to most of the witnesses about the Union and also acknowledged being asked and answering the questions of employees regarding whether or not Respondent could close its plant if the Union came in. I am persuaded that Williams' testimony was so replete with a lack of recall that it is unworthy to be relied upon and as such I decline to credit his testimony where it is in conflict with the testimony of witnesses called by counsel for the General Counsel.

Therefore, based on the credited testimony of the witnesses called by counsel for the General Counsel it is clear that Williams engaged in unlawful interrogation of employee Barfoot when he inquired of her regarding what had transpired at a union meeting she had attended the night before and when he asked her how she was going to vote. Such conduct violates Section 8(a)(1) of the Act, as alleged at paragraph 7 of the complaint, and I so find.

Additionally, I find that Supervisor Williams threatened employees with loss of their jobs if they joined or engaged in activities on behalf of the Union as alleged at paragraph 9 of the complaint when he told employee Barfoot that if the Union ever came in the plant would probably close and he as well as the employees would lose their jobs. I also find that the same conversation would constitute an unlawful threat of plant closure as alleged at paragraph 10(b) of the complaint.

I likewise conclude and find that Respondent through Supervisor Williams unlawfully threatened employees with discharge when he told employee Barfoot that if

the Union ever came in employee Osborne would not be there long enough to enjoy it. This particular finding was not alleged as a violation in the complaint; however, I find it was fully litigated and I have made a finding thereof. Where a matter is fully litigated and is clearly related to the subject matter of the complaint as it was in the instant case, additional findings of violations of the Act may be made thereon. See, generally, *Crown Zellerbach Corporation*, 225 NLRB 911 (1976).

I find that when Supervisor Williams asked employee Laminack to write down what she felt needed changing at the plant and if he could he would change it or try to have it changed he engaged in conduct that violated the Act in that in so doing he solicited employees concerning grievances they had with Respondent and promised to remedy the grievances all at a time when Respondent was aware of the Union's organizational campaign. I find his conduct was an attempt to cause the employees to reject the Union as their collective-bargaining representative. I also conclude and find that the same conversation of Williams constituted a promise to the employees of additional benefits if they voted against the Union. I find the outlined conduct violated Section 8(a)(1) of the Act, as alleged at paragraphs 10, 12, and 13 of the complaint.

The conversation which I find Supervisor Williams had with employee Wade wherein he asked Wade how he was going to vote constituted unlawful interrogation.

With respect to the conversation that employee Jayne Osborne had with Supervisor Williams wherein Williams told her that if the Union was voted in the employees would not get a raise when Gadsden did, but that the employees would have to wait and let the Union get the raise for them, did not constitute an unlawful threat of a denial of a wage increase on the part of Supervisor Williams. I shall recommend that portion of the complaint at paragraph 8 that is based upon the testimony of Jayne Osborne be dismissed.

Supervisor Williams did not deny and I credit the testimony of Ronald Osborne that Williams stated to him, after he had attended a union meeting, that he heard he had made a few statements the night before. Osborne responded that instead of making statements he had asked questions at the meeting. Williams then discussed with Osborne the fact that the employees of Respondent had tried to go union once before and had not and it would not go union this time. I find Williams' comments may be viewed as constituting either unlawful interrogation or as creating the impression that the employees' activities on behalf of the Union were under surveillance. Inasmuch as the complaint only alleges the conduct to constitute interrogation and not an impression of surveillance I shall treat and find it only as interrogation, as alleged at paragraph 7 of the complaint.

C. *The Warning Given Ronald G. Osborne*

The General Counsel at paragraph 12 of the complaint alleges that Respondent, on or about June 24,[3] issued in violation of Section 8(a)(3) and (1) of the Act a warning to its employee Ronald G. Osborne because of his membership in and activities on behalf of the Union and because he engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection.

Jayne Osborne, wife of Ronald Osborne, testified she was involved in the incident that gave rise to her husband receiving a reprimand. She described the incident as follows:

> Well, I was at my scale weighing chicken and James [Supervisor Williams] come up to me and told me to weigh this box of chicken. When I already knew how to weigh it. That's what I did everyday. And Half-Pint [Ronald Osborne] was standing behind me and he said, "You don't have to pay any attention to him; he's just trying to be a smart-ass."

J. Osborne testified Supervisor Williams did not respond to her husband's comment in any manner but rather just turned and walked away. J. Osborne testified that she had heard her husband, Ronald Osborne, on a daily basis use language like that in the presence of Supervisor Williams. J. Osborne testified she had told Williams on occasion to "go to hell" and "to kiss my ass." J. Osborne testified that she had never received a reprimand for using language of that nature. J. Osborne testified that she and her husband were good friends with Supervisor Williams and that Supervisor Williams and her husband were always cutting up. She testified, "like on Fridays, James [Supervisor Williams] would give our checks out and he would come up behind me and start putting my check in my back pocket and Half-Pint [Ronald Osborne] would tell him to quit and leave me [alone] . . . quit playing with my butt."

J. Osborne, when asked on cross-examination, how the matter would come up wherein she would tell Supervisor Williams to kiss her "ass" responded: "He would tell me to do something and I would say 'kiss my butt' or something like that, just joking." J. Osborne testified her husband informed her later that day that he had gotten a warning for making the comment he did to Supervisor Williams.

Ronald Osborne testified that on the date that he received the reprimand in question his wife was operating the scales weighing chickens before they were placed in the cooler. He testified that Supervisor Williams came by and "told my wife to weigh out some chickens and I told my wife not to listen to him; that he was just being a smart ass. As me and James Williams always just played around like that." Osborne testified that Williams walked away. About 15 minutes later Williams came back, got Osborne, took him to the office, and gave him a warning. (G.C. Exh. 2.) Osborne testified he had made similar statements on a daily basis to Williams. Osborne testified he had in the past told Supervisor Williams that he would whip his "ass" and things of that nature. Osborne testified he and Supervisor Williams were good friends and, "Well, we'd aggravate each other about each other's wives. Like he would be aggravating my

[3] Although the complaint alleges that the warning issued on June 24 and the General Counsel at the hearing did not move to amend the complaint, it is clear from the record evidence that the warning issued on July 8 (G.C. Exh. 2).

wife over there talking to her and I'd tell him, I'd say, 'James, leave my wife alone.' He'd say, 'Well, Half-Pint, you go out with my wife all the time.' He said, 'I got two kids that belong to you and I need some child support.' All the time horseplaying like that. Pinching each on the leg; grabbing each other." Osborne testified he had never received any reprimands or discipline of any kind for his language. Osborne testified that other employees used like language in front of Supervisor Williams.

Osborne acknowledged on cross-examination that prior to his receiving the warning involving Supervisor Williams and his wife he had received a warning for throwing a pocketknife at a box at the plant. Osborne also acknowledged he had received a 3-day suspension for coming to the plant at a time when he was off from work and getting into an argument at the plant when he was told his wife could not be released from work to go on a trip with him to Georgia. Osborne testified he had been drinking at the time.

Respondent acknowledged at the hearing that Osborne was vociferous in his activity on behalf of the Union and that he was discharged the day before a Board-conducted election.

Supervisor Williams testified that as best he could remember, and he was not too sure about it, but he thought the scales for weighing chickens was torn up on the morning in question thus he was instructing J. Osborne on how to weigh the meat. Williams testified that Ronald Osborne was on the deboning line and "he screamed out and said, 'don't pay any attention to him; he's just trying to be a smart ass.'" Supervisor Williams stated that every employee on the deboning line, the cut-up line, and some of the employees on the Kentucky Fried Chicken line heard what Osborne said. Williams testified he went directly to his supervisor, Area Manager Paracca, about the incident.

Supervisor Williams informed Area Manager Paracca what had happened and Paracca instructed him to bring Osborne to the office, which he did. Osborne was issued a reprimand for his conduct.

Supervisor Williams testified that employees "might cuss me behind my back, but not to me." Williams testified he would not tolerate employees cursing at him. Williams was unable to recall any other incident where an employee had told another employee not to do what he (Williams) was instructing the employee to do. Supervisor Williams testified that he was very close to the employees on his lines and they talked, kidded, and did a lot of things together. Supervisor Williams could not recall J. Osborne ever telling him to kiss her "ass."

Supervisor Williams testified no one had ever told him he was going to whip his "ass"; however, he stated there had been a good deal of pinching at one time on the lines under his supervision. Supervisor Williams stated he and Ronald Osborne were good friends and kidded around a lot. Williams testified they teased each other about their wives. Williams testified further about the teasing between Osborne and himself: "When we were pinching one another, this probably wasn't on the line. This probably was in the supervisor's office or in the hallway or a staircase or something when we walked by one another." Supervisor Williams testified there were times when employees would be told by him to do something and just to tease him they would say "oh hell" or something like that. Williams stated: "Nobody wanted to do what I told them to do. Everybody did what I asked them to."

Supervisor Williams testified that a former employee, Karen Pugh, had cursed a fellow employee two or three times and on the fourth occasion she was taken to the office and discharged. Williams testified however that there was anger and some difficulty between the two employees.

Respondent contends that the warning given to Osborne with respect to his telling his wife to disobey the instructions of her supervisor was nothing more than a warning for pure and simple insubordination. Respondent contends that in order for Supervisor Williams to effectively perform his functions on the work lines assigned to him he simply could not tolerate such comments of insubordination as those of Osborne particularly when the comments were heard by other employees on the debone, cut-up, and Kentucky Fried Chicken lines.

Counsel for the General Counsel contends with respect to both the warning and subsequent discharge that Osborne was singled out and punished for something that had been done by other employees on prior occasions with complete impunity.

With respect to credibility it is undisputed that Supervisor Williams was instructing J. Osborne with respect to weighing chickens. It is further undisputed that Ronald Osborne told his wife, apparently within earshot of other employees, not to listen to Supervisor Williams that he was just trying to be a "smart ass." Osborne testified he had made comments of this nature to Williams in the past, a fact Williams denied. Williams' overall credibility was diminished considerably in my opinion by his continual inability to recall most of the critical events of the case as they pertained to him. As indicated elsewhere in this Decision, Williams did not deny outright most of the comments attributed to him but rather simply indicated an inability to recall such comments. Both of the Osbornes testified clearly, candidly, and in my opinion truthfully about the events that took place at work with respect to the warning given to and the discharge of Ronald Osborne. I, therefore, credit Ronald Osborne's testimony that in the past he had made comments to Supervisor Williams of a similar nature to the one he received a warning. The record evidence establishes there was a great deal of levity and profanity in the exchanges that took place around Supervisor Williams and his employees, particularly the Osbornes.[4] Williams acknowledged a good deal of kidding took place between him and Ronald Osborne about their respective wives. J. Osborne credibly testified that Supervisor Williams would place her paycheck in her back pocket and that her husband would tell Supervisor Williams in explicit language to leave his wife alone. I am therefore persuaded based on the admitted teasing that went on between Osborne and Williams that Osborne when he told his wife not to

[4] Employees Laminack, Barfoot, and Denney each testified with respect to the profane language used on the lines that were supervised by Supervisor Williams.

pay any attention to Supervisor Williams' instructions was engaging in nothing more than conduct of a nature that he had engaged in with Williams on numerous occasions before, and that Respondent singled Osborne out on this occasion because of his activities on behalf of the Union.

Respondent, as outlined elsewhere in this Decision, had animus toward the Union with specific animus directed toward Osborne. Such specific animus is borne out by the credited testimony of Barfoot that Williams told her if the Union did come in Osborne would not be there long enough to enjoy it. I am persuaded that counsel for the General Counsel established a *prima facie* case with respect to the warning issued to Osborne on July 8, and I am likewise persuaded that Respondent's asserted reasons for issuing the warning were nothing but a pretext with the true reason for the warning being Osborne's union activities. I therefore find that Respondent violated Section 8(a)(3) of the Act as alleged in the complaint when it issued the warning it did to Osborne on July 8.

D. *The Discharge of Ronald G. Osborne*

The General Counsel at paragraph 16 of the complaint alleges that Respondent discharged Ronald G. Osborne on July 16, and thereafter failed and refused to reinstate him because of his membership in and activities on behalf of the Union and because he engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection.

Osborne commenced work for Respondent in July 1980 and worked there until his discharge on July 16. Osborne worked on the debone line under the supervision of Supervisor Williams. Osborne testified he was employed during the Union's organizing campaign which it was acknowledged commenced in February 1981. Osborne talked to employees about the Union and gave them union cards at his home and in the parking lot. Osborne wore "vote yes" stickers on his person, while at work, at the plant. Osborne testified he attended a meeting called by Respondent at which Plant Manager Starkey spoke stating his opposition to the Union. Osborne testified that he spoke up at the same meeting telling everyone to vote for the Union. As is set forth elsewhere in this Decision, Supervisor Williams inquired of Osborne with respect to the Union after Osborne had attended a union meeting the night before.[5]

Osborne testified that on his job he wore a liner from a shipping container to protect his clothing and avoid getting the chicken that was being processed contaminated. Osborne testified he preferred a shipping container liner to an apron because of his size in that an apron would drag the floor whereas he could wear a shipping container liner without any difficulty. Osborne testified he was working on the debone line catching meat on July 16, when fellow employee Gary "Bucky" Wade came along and ripped the liner that he, Osborne, was wearing off his back. Osborne testified he told Wade that he would get him as Wade laughed and ran away. Osborne testified that he and Wade often engaged in such conduct. Osborne stated that after Wade ripped the liner from his back he followed Wade up the line to where Wade was talking with another employee. Osborne took a pair of scissors and clipped a portion of the apron that Wade was wearing. Later that same day, Wade took the apron off, hung it up, and went on break. Osborne finished cutting Wade's apron into two pieces while Wade was gone on break and hung the pieces back up. Osborne had one of his boots off for some reason when Wade returned to the area and Wade ran, grabbed his boot, and was in the process of going to fill it with ice at the ice machine when he was observed by Supervisor Williams. Williams instructed Wade to give the boot back to Osborne.

According to Osborne a short time later Supervisor Williams came and took him to the personnel office. Osborne testified that when he arrived at the personnel office Assistant Plant Manager Casey and Personnel Clerk Betty Millican were present along with Supervisor Williams. Osborne testified that Assistant Plant Manager Casey told him "this has cost you your job . . . for cutting Bucky's apron." Osborne protested stating that this type of conduct had gone on for a long time and that Supervisor Williams knew about it. Osborne asked that fellow employee Wade be called in to the meeting so that he could prove that Wade had jerked his liner off of his back just prior to his cutting Wade's apron. Osborne was told that Wade had already made his statement and there was no need for him to come back down to the office.

Osborne testified that he cut Wade's apron because he and Wade were engaging in horseplay and because Wade had jerked his liner off prior to his cutting Wade's apron. Osborne stated that Supervisor Williams had observed the two of them engage in such conduct in the past, and that Supervisor Williams had seen Wade rip the liner off of his back several times and had just laughed about it. Osborne testified that approximately a week before the election Brenda Nichols, a fellow employee, had come up behind him while Supervisor Williams was standing there, and had taken a pair of scissors and cut the liner off his (Osborne's) back. Osborne stated that Williams said nothing to Nichols about the incident. Osborne testified that even he and Supervisor Williams had engaged in horseplay such as throwing ice and pinching each other. Additionally, Osborne stated that Supervisor Williams had blown up rubber gloves with carbon dioxide and had thrown them into water so they would expand and break with a loud noise. Osborne stated he had never been reprimanded for engaging in horseplay. Osborne testified that fellow employee Michael Sparks cut the sleeves out of his (Osborne's) jacket one day when they were horseplaying in the frozen packout department and that Supervisor Travis Holliday observed them do so.

On cross-examination, Osborne acknowledged that when he was discharged he told Supervisor Williams at the time that he would get him, that it did not matter

[5] Respondent's counsel stipulated at the hearing that Osborne was vociferous in his support of the Union and that he was discharged the day before the Board conducted its election on July 17.

where, even if it were in Arab, Alabama, but he would get him.[6]

Gary Bucky Wade testified that he worked for Respondent from June 1980 until the plant closed in December 1981. Wade testified he placed meat on the debone line under the supervision of James Williams.

Wade testified that, on July 16, Osborne was on the other end of the belt from him catching meat. Wade testified that Osborne wore plastic bags and that he would go down and snatch them off Osborne and tear them up. Wade stated that Osborne told him he was going to get him and that at or about 2 minutes before he went on break he was talking with a fellow employee on another line when Osborne came to him and cut his apron a little bit. Wade testified: "He [Osborne] just snuch up behind me and clipped it a little bit, you know. We just laughed it off." Wade testified that when he returned from break and got his apron it had been cut too short for use therefore he went to the personnel office to buy a new one.[7]

Wade testified that before going to purchase a new apron he observed Osborne sitting with one of his boots off. Wade testified: "I snatched it [the boot] and was going to go to the ice machine and fill it up with ice and [Supervisor] James Williams told me to give it back [to Osborne]."

Wade testified he then proceeded to the office where a secretary named Betty wanted to know why he needed to get a new apron and what had happened to his old one. Wade told her that Osborne had cut his old apron. Wade testified that Betty told him that Osborne should be made to pay for the apron. Wade told Betty he would pay for it himself. Wade testified that Supervisor Williams, Assistant Plant Manager Casey, and Area Manager Richard Paracca came into the office at that time and talked to him. Wade testified he was told, "they said wasn't nobody going to get in trouble; they just wanted to know what happened to my apron, and I told them he [Osborne] cut it." Wade was again told that Osborne should be made to pay for the apron. Wade again stated that he would pay for the apron himself. Wade testified he returned to his work station and that in a short while Supervisor Williams came and took Osborne from the area.

Wade testified he never knew of anyone receiving a disciplinary warning for engaging in horseplay. Wade testified he and Osborne were good friends and they had engaged in horseplay in the past. Wade testified that he did not receive a reprimand for grabbing Osborne's boot and running with it. Wade testified he had in fact engaged in that type of activity on previous occasions and had done so in front of Supervisor Williams. Wade stated that Supervisor Williams would throw ice or put carbon dioxide in gloves, blow them up, and have them explode with noise. Wade testified Supervisor Williams would also scare employees with heads of chickens in his hand. Wade testified he would tie employees' apron strings around poles at the plant, put ice down employees' backs, and specifically he had placed ice down Osborne's back and that Osborne had placed ice down his back. Wade testified he had cut employee Bill Sullins' apron and that Sullins had cut his, Wade's, apron. Wade testified he knew of no reason why Osborne would cut his apron on the day that he did other than the fact, "We was just always clowning around."[8]

Counsel for the General Counsel presented employee Laminack as a witness who testified that the work of cutting the right wing from a chicken every second became a boring job and that in order to break the boredom she, along with other employees, engaged in horseplay. Laminack testified she had thrown chicken livers, chicken hearts, and ice and had tied employees' aprons in knots. Laminack testified that she had done so in the presence of Supervisor Williams and that horseplay occurred on a daily basis. Laminack testified that Supervisor Williams had even engaged in that type horseplay. She testified for example, "Well, there's another wing cutter, Eloise, he's [Supervisor Williams] tied her apron up around her and made her boobies big. Tied it in knots."

Laminack testified she was present on July 16 when Osborne cut Wade's apron. Laminack described the event by stating, "It was just a funny thing, and we all were laughing about it. Bucky [Wade] looked surprised."

Employee Barfoot testified that because the jobs were tedious and boring that if the employees did not joke around they would go berserk. Barfoot testified that in order to make the job bearable the employees engaged in horseplay such as throwing chicken livers or gizzards at their fellow employees and putting ice down their backs. Barfoot testified she had engaged in such conduct in the presence of Supervisor Williams and that neither she nor her fellow employees had received any reprimands for that type of activity. Barfoot testified Supervisor Williams had tied employees to the worktables by their apron strings and had placed stickers on them.

Employee Denney testified she observed employees Osborne and Wade on a daily basis together joking, laughing, and pinching each other on the legs in the presence of Supervisor Williams.

Jayne Osborne testified that she had seen employees fill gloves with carbon dioxide causing the gloves to explode with noise. Osborne testified she had observed employees throw ice on each other and take chicken heads and scare each other. Osborne stated this type of conduct had taken place in front of Supervisor Williams.

Respondent presented Supervisor Williams who testified he was in charge of the cut-up, deboning, and special cut lines. Williams testified that he participated in the events surrounding the termination of employee Osborne. On July 16, Williams was in the computer room where Respondent was encountering a problem in the operation of the cooler and as he came out of the computer room he observed that employee Wade had employee Osborne's shoe. Williams instructed Wade to give Osborne back his shoe and then continued his attempt to straighten out the mechanical problem with the cooler at the plant. Williams testified that shortly thereafter some-

[6] Arab, Alabama, is Supervisor Williams hometown.

[7] Wade testified that the first four aprons were given to the employees by Respondent and thereafter the employees had to purchase them at a price of $1.25.

[8] Wade testified he did not say to Respondent's officials that Osborne had gone too far when he cut his apron.

one came from the personnel office and told him they had Wade in the personnel office. Williams proceeded to the personnel office where he was informed of the apron cutting incident. Williams testified that Wade gave a statement concerning the incident. The statement which was signed by Supervisor Williams indicated that Wade had stated he had taken off his apron while on break and that Osborne had cut the apron into two pieces while he was on break. The statement indicated that Wade did not know why Osborne had clipped his apron. (Resp. Exh. 1.)

Supervisor Williams testified he then brought Osborne to the office and discussed the incident with him. After obtaining a statement from Osborne he was terminated. Williams testified: "He [Osborne] told me he didn't want to talk to me anymore, and he would get me no matter where it was at, if it was in Arab or anywhere, that he would get me." (Williams testified he made his home in Arab, Alabama.)

Williams testified with respect to horseplay that he had seen employees throw chicken gizzards, but not ice. Williams acknowledged he had observed employees tie the aprons of other employees tight around them. Williams testified, "I never can recall about blowing up any gloves. I don't think I ever did." Supervisor Williams testified he did not think employees had ever thrown chicken gizzards at him, but it could have happened. Williams testified he had never reprimanded employees for throwing chicken gizzards at each other. Supervisor Williams acknowledged he had tied the apron of an employee named Eloise up around her neck and that it lifted her apron up. Williams testified Eloise was the only one he could recall doing that to because he and she were very close. Supervisor Williams testified he could not remember an employee by the name of Michael Sparks nor could he remember any cutting or ripping of liners from employees' backs.

Area Manager Richard Paracca testified that he was involved in the discharge of Osborne. Paracca testified that when he was called into a meeting about the incident the first thing Wade told him was that Osborne had gone too far in cutting his apron. Paracca testified: "Bucky [Wade] and Half-Pint [Osborne] had cut up a good bit and I wanted to make sure this wasn't just cutting up. When I saw Gary, he was upset about it." Paracca testified he did not participate in the meeting with Osborne after Wade had been interviewed.

Paracca testified he had never seen Supervisor Williams participate in horseplay such as shooting water or throwing ice. Paracca testified he had written employees up for horseplay and he stated that the apron cutting incident was not horseplay, that Wade was angry, and that he was sure it was not just horseplay.

Assistant Plant Manager James Casey testified he was notified by personnel that the apron cutting incident had occurred. Casey proceeded to personnel to determine what the problem was. Casey testified that when he arrived at the personnel office Area Manager Paracca and Supervisor Williams were already there. Casey asked Wade to explain to him exactly what had happened. According to Casey, Wade told him his apron had been cut either before or during his break. Casey testified Wade seemed upset about it. Casey could not recall anything being said regarding no one getting into trouble if Wade told what happened.

Casey testified he discussed the matter with Wade and later with Osborne. According to Assistant Plant Manager Casey, Osborne felt that Dr. Schuler, a Federal meat inspector, had "pimped" on him. Casey testified Supervisor Williams was trying to talk to Osborne but Osborne did not want to talk with him. Casey stated Osborne told Williams he would get him one way or the other whether in Arab, Alabama, or someplace else.

Casey informed Osborne that, due to his cutting Wade's apron and his past misconducts, he was being terminated.

Assistant Plant Manager Casey testified he tried to control horseplay at the plant and had even written employees up for horseplay. Casey testified that he had given Douglas Blankenship a written warning on May 29, 1969, for throwing ice, running, and costing Respondent money. (Resp. Exh. 3.) Casey testified another example of an employee being given a warning for engaging in horseplay was when Blankenship was given a warning on November 17, 1976, for running a jack into another employee and injuring the employee's leg. (Resp. Exh. 4.) Casey testified that employee Jimmy Bromblove was given a warning on September 12, 1979, for horseplay which consisted of throwing blood on fellow employees.

With respect to credibility, as elsewhere in this Decision, I find Supervisor Williams to be an unreliable witness because of his very poor memory of events in which he was involved. Ronald Osborne impressed me as a believable witness and as such I credit his testimony that he along with employee Wade had engaged in various types of horseplay in the past in the presence of Supervisor Williams. Osborne's testimony in this respect was corroborated by Wade as well as various other employees. I likewise credit Osborne's testimony that fellow employee Nichols had cut the apron he (Osborne) was wearing and that she had done so in the presence of Supervisor Williams. The credible evidence is overwhelming that the employees under Williams' supervision frequently engaged in general horseplay. For example, employee Wade testified that horseplay had taken place in the presence of Supervisor Williams and that Williams had participated in various types of horseplay himself such as throwing ice, filling gloves with carbon dioxide, and frightening employees with portions of chickens. I am fully persuaded that employees Laminack, Barfoot, and Denney were telling the truth when they stated that Supervisor Williams had observed them, on a daily basis, engaging in horseplay to break the boredom of their jobs. In fact, Supervisor Williams acknowledged engaging in the horseplay of tying employees' apron strings, pinching employees, and generally teasing them. Even Area Manager Paracca acknowledged there was horseplay on the work lines which Supervisor Williams presided over and further acknowledged that Osborne and Wade "cut up a good bit." I am persuaded and find that horseplay was the order of the day for the employees

who worked under the supervision of Supervisor Williams.

Further, with respect to credibility, after careful observation of employee Wade, both in his initial and rebuttal testimony, I am persuaded that he did not tell any official of Respondent that Osborne had gone too far in cutting his apron. I am also persuaded that the reason Wade told management officials of Respondent about the apron cutting incident and who had been involved in it was that he had been assured by those officials that no one concerned would get into trouble as a result of what Wade would tell them. Wade knew that he, as well as Osborne and other employees, had engaged in horseplay on a daily basis and I am convinced that he did not wish to get others or himself into trouble with management at Respondent's facility.

Based upon all of the above facts and circumstances, I find that counsel for the General Counsel has established a *prima facie* showing of a violation of Section 8(a)(3) and (l) of the Act by Respondent when it discharged Ronald G. Osborne in what was clearly retaliation for his having engaged in union and protected concerted activities. I find counsel for the General Counsel established such a *prima facie* case inasmuch as Respondent had demonstrated, as outlined elsewhere in this Decision, its general animus toward the Union and its specific animus toward employee Osborne. Employee Osborne had been subjected to interrogation by Supervisor Williams and Supervisor Williams had stated to an employee that if the Union came in Osborne would not be around long enough to enjoy it. The timing of the discharge is suspect in the instant case in that it happened 1 day before the Board-conducted election and it fulfilled the predictions of Supervisor Williams. The discharge was of a known union adherent who in the words of Respondent had been "vociferous" in his support of the Union.

I am also persuaded and find that the asserted reasons given by Respondent for the discharge of Osborne were pretexual and the real reasons for his discharge were his union and protected concerted activities. Respondent contends it discharged Osborne for cutting fellow employee Wade's apron. It is abundantly clear from the record evidence as outlined above that Osborne was discharged for an offense that had been tolerated by Respondent. Not only had that type of offense been tolerated by Respondent but also its own supervisory personnel had engaged in horseplay along with the employees. The pretextual nature of Respondent's reasons is further borne out by the fact that it did not discipline employee Wade although Wade had removed the liner from employee Osborne and was even caught in the act of attempting to fill employee Osborne's boot with ice. There can be no question that the conduct, as described by employee Wade, of "clowning around" had been fully condoned and participated in by the management personnel of Respondent. For example, Area Manager Paracca acknowledged that Osborne and Wade cut up a good bit. There was nothing different in the conduct engaged in by Osborne on the occasion in question than from numerous other occasions; it would appear the only difference this time was that Osborne had engaged in union activities. Respondent simply seized upon the apron cutting incident to rid itself of this irritating, vociferous union supporter.

I find that the reasons assigned by Respondent for the discharge of Osborne were pretextual and that Respondent failed to rebut the *prima facie* case established by counsel for the General Counsel. Accordingly, I find that Respondent violated Section 8(a)(3) and (1) of the Act by its discharge of employee Ronald G. Osborne. See *Limestone Apparel Corp.*, 255 NLRB 722 (1981); *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

Respondent contends that even if it is found that Osborne was unlawfully discharged no reinstatement would be proper because of the threat that Osborne made to Supervisor Williams to get him either at Respondent's facility or in Supervisor Williams' hometown. I reject Respondent's contention in this respect. Osborne's behavior at his termination interview was prevoked by his discriminatory discharge. I conclude and find that his conduct does not warrant his forfeiting the opportunity for reinstatement. See *Model A and Model T Motor Car Reproduction Corporation*, 259 NLRB 555, fn. 4 (1981).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, found to constitute unfair labor practices occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. Respondent, Spring Valley Foods, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Food and Commercial Workers International Union, AFL-CIO, CLC, Local 405, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(a)(l) of the Act by interrogating its employees concerning their union membership, activities, and desires; by threatening its employees that it would close its plant if the employees joined or engaged in activites on behalf of the Union; by threatening its employees with the loss of their jobs if they joined or engaged in activities on behalf of the Union; by threatening its employees with discharge if the employees joined or engaged in activities on behalf of the Union; by promising its employees benefits if the employees voted against the Union; and by soliciting from its employees grievances they had with Respondent and promising to remedy those grievances for the purpose of causing its employees to reject the Union as their collective-bargaining representative.

4. Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act by issuing a warning on July 8, 1981, to its employee Ronald G. Osborne.

5. Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act by discharging on or about July 16, 1981, and thereafter failing and refusing to reinstate its employee Ronald G. Osborne.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

7. The General Counsel has not established by preponderance of evidence that Respondent has violated the Act as alleged in the complaint except to the extent found above.

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

It having been found that Respondent unlawfully reprimanded and discharged its employee Ronald G. Osborne, I shall recommend that Respondent be ordered to offer Osborne full reinstatement to his former or substantially equivalent position of employment without prejudice to his seniority or other rights and make him whole for any loss of pay that he may have suffered by reason of the discrimination against him with interest. Backpay shall be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950). Interest shall be computed as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). Further, it is recommended that Respondent expunge from its files any reference to the reprimand of July 8, 1981, or to the July 16, 1981, discharge of Ronald G. Osborne and to notify him in writing that this had been done and that evidence of the unlawful reprimand and discharge will not be used as a basis for future personnel actions against him. See *Sterling Sugars, Inc.*, 261 NLRB 472 (1982). Inasmuch as Respondent is no longer in business in Blountsville, Alabama, reinstatement of Osborne is subject to Respondent's reopening its operation in Blountsville, Alabama. Further, inasmuch as Respondent is no longer operating its Blountsville, Alabama, plant I shall recommend that copies of the notice it would normally post at its facility be mailed to each of the employees employed by Respondent at the time it closed its Blountsville, Alabama, plant on December 17, 1981. A copy of the notice shall also be mailed to Ronald G. Osborne.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[9]

The Respondent, Spring Valley Foods, Inc., Blountsville, Alabama, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union membership, activities, and desires.

(b) Threatening its employees that it would close its plant if the employees joined or engaged in activities on behalf of the Union.

(c) Threatening its employees with loss of their jobs if they joined or engaged in activities on behalf of the Union.

(d) Threatening its employees with discharge if they engaged in activities on behalf of the Union.

(e) Promising its employees benefits if they voted against the Union.

(f) Soliciting its employees concerning grievances they had with Respondent and promising to remedy those grievances for the purpose of causing its employees to reject the Union as their collective-bargaining representative.

(g) Discharging employees or otherwise discriminating against them in any manner with respect to their tenure of employment or any terms or conditions of employment because they engaged in activities on behalf of the Union.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the purposes of the Act:

(a) Offer Ronald G. Osborne immediate and full reinstatement to his former job or, if his former job no longer exists, to a substantially equivalent position of employment without prejudice to his seniority and other rights and privileges and make him whole for any loss of earnings he may have suffered by reason of the discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Expunge from its files any reference to the July 1981 reprimand and discharge of employee Ronald G. Osborne and notify him in writing that this has been done and that evidence of the unlawful reprimand and discharge will not be used as the basis for future personnel actions against him.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due under terms of this recommended Order.

[9] In the event that no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order and all objections thereto shall be deemed waived for all purposes.

(d) Mail copies of the attached notice marked "Appendix"[10] to all employees employed by Respondent at the time it closed its Blountsville, Alabama, facility on December 17, 1981. A copy of the notice shall also be mailed to Ronald G. Osborne.

(e) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges violations of the Act not specifically found.

[10] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present their evidence, it has been decided that we violated the law in certain ways. We have been ordered to post this notice.

WE WILL NOT interrogate our employees concerning their membership in or activities on behalf of or the membership in or activities of other employees on behalf of United Food and Commercial Workers International Union, AFL-CIO, CLC, Local 405, or any other labor organization.

WE WILL NOT threaten our employees that we will close our plant if they join or engage in activities on behalf of the Union.

WE WILL NOT threaten our employees with loss of their jobs if they join or engage in activities on behalf of the Union.

WE WILL NOT threaten our employees with discharge if they join or engage in activities on behalf of the Union.

WE WILL NOT promise our employees benefits it they vote against the Union.

WE WILL NOT solicit our employees concerning grievances they have with us and promise to remedy those grievances for the purpose of causing our employees to reject the Union as their collective-bargaining representative.

WE WILL NOT discharge or otherwise discriminate against our employees with regard to hire or tenure of employment or any terms or conditions of employment for engaging in activities on behalf of the Union.

WE WILL offer Ronald G. Osborne immediate and full reinstatement to his former job or, if his former job no longer exists, to a substantially equivalent position of employment without prejudice to his seniority or other rights and WE WILL make him whole for any loss of pay he may have suffered by reason of our discrimination against him with interest.

WE WILL expunge from our files any references to the July 1981 reprimand and discharge given to employee Ronald G. Osborne and WE WILL notify him that this has been done and that evidence of this unlawful conduct will not be used as a basis for future personnel actions against him.

SPRING VALLEY FOODS, INC.